

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, June 11, 2008, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Ray Dwyer
Walter Schmidt

BOARD MEMBERS ABSENT: Tom Day

SECRETARY TO THE BOARD: Peggy S. Tilley

OTHERS PRESENT: Linda Kieffer, BA08:025, petitioner
Wayne Utterback, BA08:025, petitioner
Pat Galagan, BA08:027, petitioner
Paul Schultz, BA08:026, agent
Walter Schaeffer, BA08:026, petitioner
Jim & Hilda Baumgartner, BA08:025
Clare Schaeffer, BA08:025
Jonathan Long, BA07:049, petitioner
Jeff Smith, BA07:049, petitioner
Mick Obrien
Therese Steder, BA08:025, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Schmidt *I make a motion to approve the Summary of the Meeting of May 28, 2008.*

The motion was seconded by Mr. Dwyer and carried unanimously.

NEW BUSINESS:

BA08:025 LINDA KIEFFER AND WAYNE UTTERBACK:

Mr. Schmidt *I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report. With the following modifications and changes:*

Condition No. 1 shall be revised to read as follows: "The existing

95 sq. ft. shed must be removed from the property prior to the issuance of a Zoning Permit for the new shed.”

The reasons for the decision shall be modified to read as follows: The approval of this request, as conditioned, will allow the petitioner to construct a new shed on the subject property while eliminating a non-conforming shed from the existing property thereby bringing the property further into compliance. The shed will be in a conforming location and the property will still meet the overall floor area ratio allowed on the property and open space requirements. The shed by the lake has been there for a long time and if were removed they would have no place for their equipment. I don't think that the removal of the shed near the lake is necessary nor relevant to the proposed shed. It should be noted that Town Plan Commission approval will be required prior to the issuance of any permits, to allow more than two accessory buildings on the property. The approval of this request, as conditioned, would not be contrary to the public interest and is within the purpose and intent of the Ordinance.

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of your request for a special exception from the accessory building floor area ratio requirements of the Waukesha County Shoreland and Floodland Ordinance, to allow the construction of a new shed on the property, subject to the following conditions:

1. The existing 95 sq. ft. shed and the 36.72 sq. ft. shed must both be removed from the property prior to the issuance of a Zoning Permit for the new shed.
2. The proposed shed must comply with the offset and setback requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements.
3. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed shed, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a Zoning Permit, a revised plan for the 12 ft. by 14 ft. shed, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the petitioner to construct a new shed

on the subject property while eliminating two non-conforming sheds from the existing property thereby bringing the property further into compliance. The shed will be in a conforming location and the property will still meet the overall floor area ratio allowed on the property and open space requirements. It should be noted that if the Board is inclined to approve the petitioner's request and not require the removal of the non-conforming shed near the lake, Town Plan Commission approval will be required prior to the issuance of any permits, to allow more than two accessory buildings on the property. The approval of this request, as conditioned, would be within the purpose and intent of the Ordinance.

BA08:027 PATRICK C. AND MARTINA M. GALAGAN

Mr. Dwyer

I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report. With the following modifications and changes:

Condition No. 7 shall be removed.

*The reasons for the decision shall be modified to read as follows:
The approval of this request with the recommended conditions will allow the petitioners to add a small addition to the existing residence that will comply with all of the locational requirements of the Ordinance and will not exceed 50% of the fair market value of the structure. No structure could be constructed on the lot without the need for an open space variance. The removal of the existing shed is not necessary because the property does not have a basement nor an attic for storage. The shed is not near the lake, is in close proximity to the neighbor's shed, it has been there for an extremely long time, and is in good condition. The approval of this request, as conditioned, is within the purpose and intent of the Ordinance.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval of the request for variances from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of an addition to the residence, subject to the following conditions:

1. The proposed addition shall not exceed 299 sq. ft. as proposed.
2. The proposed addition must be located at least 10 ft. from the side lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
3. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance

with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

4. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed addition, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
6. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the survey required in Condition No. 4.
7. The non-conforming shed located near the lake must be removed from the property prior to the issuance of a Zoning Permit for the proposed addition.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request with the recommended conditions will allow the petitioners to add a small addition to the existing residence that will comply with all of the locational requirements of the Ordinance and will not exceed 50% of the fair market value of the structure. No structure could be constructed on the lot without the need for an open space variance. With the removal of the non-conforming shed, as recommended, the approval of this request will only slightly increase the footprint of the structures on the property. The approval of this request, as conditioned, is within the purpose and intent of the Ordinance.

BA08:026 WALTER SCHAEFFER (OWNER) PAUL SCHULTZ (AGENT):

Mr. Ward

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the correction to condition No. 6 as stated by Peggy Tilley.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the C-1 EFD requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, but **approval** of the request for variances from the road setback, and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of a residence and attached garage on the property, subject to the following conditions:

1. A Certified Survey Map must be prepared by a registered land surveyor and submitted to the Town of Merton and the Planning and Zoning Division staff for review and approval. The Certified Survey Map must indicate that Parcel 1 and Parcel 2 shall remain together and shall not be sold separately. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit for the new residence.
2. The proposed floor area on the property, including the first and second floors of the residence, attached garage, detached garage, any covered decks, covered patios and/or covered porches, shall not exceed 3,872.7 sq. ft.(15% floor area ratio).
3. The total footprint of the residence and attached garage shall be no larger than 1,600 sq. ft. and must consist of an attached garage of at least 400 sq. ft. in size and a first floor of at least 850 sq. ft.
4. The residence and attached garage and all other appurtenances must not exceed two stories, as viewed from the lake and the road. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
5. The residence and attached garage and all other appurtenances must comply with the shore setback requirements of the Ordinance and must be located outside of the 100-year floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building and/or deck must be located so that the outer edges of the overhangs conform to the offset/setback requirement.
6. The residence and attached garage and all other appurtenances must be located a minimum of 20 ft. from the pavement of Reddelien Road as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the setback requirements.
7. The first floor of the structure (residence and attached garage) must be placed at least two (2) ft. above the 100-year floodplain elevation, at the flood protection elevation of 901.9 ft. a.m.s.l. The foundation shall be flood proofed and certified as set forth herein. Fill shall be used to elevate the first floor so as to meet the above. The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill

elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be flood proofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by a professional engineer registered in the State of Wisconsin. Other methods may be used, as long as they are certified as set forth above. All flood proofing measures shall at a minimum provide anchorage to resist flotation and lateral movement and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified by a professional engineer that the flood proofing measures are adequately designed to protect the property to the flood protection elevation.

8. No change in the existing topography or drainage courses on any land will be allowed (except as required in Condition No. 7 above), which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. Further, no fill or alterations will be permitted under any circumstances, which will alter the drainage or topography in a way that will adversely affect the surrounding lands. No grading or filling activities will be permitted within the floodplain.
9. Upon completion of the foundations of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Merton Building Inspector and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff, prior to proceeding with construction.
10. The fill area and the fill around the residence shall be in accordance with the final Grading Plan, to be approved by the Town Engineer. No floodplain grading or filling is permitted.
11. Upon completion of the project, an "As-Built" Grading Plan, showing the finished grades on the property must be prepared by a registered land surveyor and submitted to the Town Engineer and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff. If that "as-built" Grading Plan indicates that the property has not been filled in accordance with the approved Grading Plan, the petitioners shall make whatever changes are necessary to bring the property into conformance with the approved Grading Plan.
12. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
13. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs and walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the existing location of the 100-year

floodplain elevation and the location of the Ordinary High Water Mark as determined by the Wisconsin Department of Natural Resources.

14. No retaining walls are permitted.
15. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
16. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading Plan may be combined with the Plat of Survey required in Condition No. 13.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Since a residence with attached garage could be constructed on the property outside of the floodplain, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. As recommended, the petitioner will be allowed additional relief from the road setback requirements to allow the structure to be moved back from the floodplain to create space for a deck to be constructed outside of the floodplain.

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome, is in scale with the lot size, and is in keeping with the characteristic of the neighborhood. It is not possible to meet the floodplain setback and the road setback requirements and still have a buildable area on the lot. Therefore, the approval of this request, as conditioned, will allow the petitioners to use the property for a permitted purpose, will permit the construction of a residence, and attached garage that is appropriately sized for the lot and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA07:049 JEFFREY SMITH

Mr. Bartholomew *I make a motion to **reconsider** the previous decision of the Board as requested by the petitioner.*

The motion was seconded by Mr. Schmidt and carried unanimously.

Mr. Schmidt *I make a motion to **approve** the request, in accordance with the Staff's memorandum, as stated in the Staff Memo and for the reasons stated in the Staff Memo.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommended that the Board clarify their decision by revising Condition No. 5 to read as follows:

Not including one basement level, the total square footage of the residence (including the attached garage) must not exceed 1,500 sq. ft. in size. The residence may also have the unenclosed, entryway overhang as shown on the building plan dated May 1, 2008, so long as the overhang complies with all offset and setback requirements contained herein.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The Planning and Zoning Division staff feels that the proposed overhang substantially complies with the Board's previous decision but that clarification should be provided as recommended. The entryway would add character to the residence and provide some protection from the elements, while not encroaching on the previously approved building envelope.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 8:12 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Peggy S. Tilley
Secretary, Board of Adjustment